

**THE EFFECTIVE DATE OF THIS ORDINANCE IS DECEMBER 15, 2009**

**ORDINANCE NO. 09-31-535**

**RE: EXTENSION AND AMENDMENT OF  
GROWTH MANAGEMENT ORDINANCE**

**Background**

On January 8, 2008, the Board of County Commissioners of Frederick County (BOCC or Board) adopted Resolution No. 08-01 which directed County staff to initiate and prepare: (1) a revised comprehensive plan, (2) a revised comprehensive zoning map, and (3) APFO text amendments revising road and school adequacy standards and adding fire and ambulance facility adequacy standards to the APFO.

The Resolution also initiated the process to consider a Growth Management Ordinance, which would impose a temporary moratorium on residential subdivision in the unincorporated areas of the County, and suspend site plan approval for certain residential multi-family developments that would not require subdivision approval. The BOCC adopted the Growth Management Ordinance (No. 08-08-484) on March 17, 2008.

The Growth Management Ordinance will expire by its own terms on January 8, 2010.

In early May 2009, the Maryland General Assembly adopted two functionally identical emergency bills (S.B. 958/H.B. 921) to "toll" the expiration of certain "permits" issued by both the State and local governments. The "State Tolling Legislation" became effective on May 7, 2009 (Chapters 334 and 335 of the Laws of Maryland 2009).

On July 14, 2009, the BOCC adopted Ordinance No. 09-23-527 (the "Extension Ordinance"), which extended certain development approvals and deadlines for a period of three years.

On October 27, 2009, the BOCC discussed the upcoming expiration of the Growth Management Ordinance (January 8, 2010). The BOCC also discussed possible revisions to the tolling provisions of the Growth Management Ordinance, in light of the State Tolling Legislation and the Extension Ordinance. The BOCC directed staff to initiate the process to extend the Growth Management Ordinance for up to an additional 90 days after January 8, 2010, and to revise and clarify the tolling provisions (Section 8) of the Growth Management Ordinance.

The Frederick County Planning Commission considered this proposed Ordinance at a public hearing on November 18, 2009 and recommended approval.

The BOCC held a duly advertised public hearing on this proposed Ordinance on December 15, 2009. The public had an opportunity to comment on this Proposed Ordinance during this public hearing.

#### **Legislative Findings**

1. The policy of the State of Maryland is that local government shall implement planning and zoning controls. *Maryland Annotated Code, Article 66B, § 4.01(a).*
2. The BOCC has jurisdiction over planning and zoning within the unincorporated areas of Frederick County.
3. Another policy of the State of Maryland is that the orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning controls. *Maryland Annotated Code, Article 66B, § 4.01(a).*

4. In exercising land use powers, the BOCC is to promote the health, safety, morals or general welfare of the community. *Maryland Annotated Code, Article 66B, § 4.01(b)*.

5. Under Maryland law, the BOCC is to adopt a Comprehensive Plan which is to serve as a guide to public and private actions and decisions to ensure the development of public and private property in appropriate relationships, all as more fully explained in *Maryland Annotated Code, Article 66B, § 3.05*.

6. To address evolving land use conditions, and so that the Comprehensive Plan may more fully address land use in Frederick County, the BOCC finds that the Comprehensive Plan should be comprehensively reviewed and revised.

7. The BOCC finds that a timely revision and review of the Comprehensive Plan and Comprehensive Zoning Map would promote: a) the orderly development and use of land and structures; b) the health, safety, morals and general welfare of Frederick County; and c) the best interests of Frederick County.

8. The BOCC finds that the existing Comprehensive Plan should be updated. The existing Plan does not include an analysis of appropriate land use issues and policies in Frederick County which reflects the current status of growth and development. A current plan should be in place before the Board may appropriately review land use issues.

9. The Comprehensive Zoning Map in Frederick County should be reviewed and revised to better reflect the Comprehensive Plan and Article 66B. The current zoning ordinance provisions do not adequately reflect the current or future land use opportunities as evident through the work of the Citizens Zoning Review Committee (CZRC)

culminating in its report that outlined over 300 recommendations to the BOCC in July 2003.

10. Extension of the Moratorium offers the opportunity to complete the alignment of updated Comprehensive Plan goals, objectives and policies with specific zoning changes required to implement the plan. Further, this provides an opportunity to incorporate updated land development regulations to implement the plan as provided for in § 3.05(a)(4)(vii) of Article 66B.

11. The BOCC is currently in the process of reviewing its Comprehensive Plan. Until this comprehensive review is completed, the County has no current and adequate Comprehensive Plan to use to review proposed land use decisions.

12. Review of any proposed land use under a revised Plan is in the best interests of the citizens of Frederick County. Such a review promotes the health, safety, morals or general welfare of Frederick County and its citizens.

13. The health, safety, morals or general welfare would be promoted by review under a more current Plan which analyzes land use matters comprehensively.

14. The process of reviewing and revising the Comprehensive Plan and the Comprehensive Zoning Map will require additional time for, among other things, analysis, drafting, public education, public input and public comment.

15. The BOCC finds that until the review and revision process is complete, the status quo of County land use should be maintained to the extent reasonably possible so that any additional adverse land use conditions are avoided.

16. The BOCC therefore continues the Moratorium on all subdivision of residential land and site plan approval for multifamily residential units.

17. This Moratorium is continued with the same limited, reasonable exceptions as were included in Ordinance No. 08-08-484.

18. The BOCC specifically finds that the up to 90-day extension of this Moratorium is reasonable.

19. The Board finds that the extension of this Moratorium is in the best interests of the citizens of Frederick County and that the Moratorium will preserve and improve the health, safety, morals and general welfare of Frederick County and will protect the environment of Frederick County.

20. The BOCC hereby determines that this Ordinance will better the public interest and the general purpose of the Subdivision Rules and Regulations.

21. Each provision of these Legislative Findings constitutes a specific legislative finding by the BOCC whether or not the individual provision includes specific "finding" language.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that Section 1, 4 and 8 of the Growth Management Ordinance (No. 08-08-484) are hereby amended as follows (additions to the ordinance are indicated by CAPITAL LETTERS or underlining; deletions are indicated by ~~strike through~~):

**Section 1. Definitions.**

A. In this Ordinance, unless the context indicates otherwise, all terms shall have the same definition and be used in the same manner as provided in the Frederick County Code and Article 66B of the Maryland Annotated Code.

B. In this Ordinance, the following terms shall have the meanings indicated:

"Adaptive Reuse Structure" shall mean the rehabilitation or renovation of an existing obsolescent or historic structure(s) from its original or most recent use to a new use.

"Affordable Housing" shall mean housing which is eligible to receive financial assistance under any local, state, or federal governmental program for the construction of low to moderate income housing or workforce level housing. Such housing must serve individuals earning no greater than 80% of the median income for the area in which the affordable housing development is located, as determined by the United States Department of Housing and Urban Development, and adjusted by household size.

"BOCC" shall mean the Board of County Commissioners for Frederick County, Maryland.

"Code" shall mean the Frederick County Code, 2004, as revised.

"Developer" shall have the meaning set forth in §1-16-3(B) of the Subdivision Rules & Regulations.

"EXTENSION ORDINANCE" SHALL MEAN FREDERICK COUNTY ORDINANCE NO. 09-23-527 (EXTENSION OF CERTAIN DEVELOPMENT APPROVAL PERIODS AND DEADLINES) WHICH WAS ADOPTED BY THE BOCC ON JULY 14, 2009.

"Final plat" shall have the meaning set forth in §1-16-3(B) of the Subdivision Rules & Regulations.

"Initiating Resolution" shall mean the BOCC Resolution that initiated this Ordinance, namely, BOCC Resolution #08-01 dated January 8, 2008.

"Planning Commission" shall mean the Frederick County Planning Commission created by §1-13-16 of the Code.

"Planning Division", a/k/a "Planning Department", shall have the meaning set forth in §1-16-3(B) of the Subdivision Rules & Regulations.

"Preliminary plat" shall have the meaning set forth in §1-16-3(B) of the Subdivision Rules & Regulations.

"Project" shall mean a property being developed through the same scheme of development. For a property that obtained its zoning classification by the adoption of a Floating Zone or Piecemeal Zoning Ordinance, the entire area which was the subject of the Floating Zone or Piecemeal Zoning Ordinance shall constitute the "project". For a property with a zoning classification established by the adoption of a Comprehensive Zoning Map Ordinance the area described in the approved preliminary plat shall constitute the "project".

"Residential zoning district" shall mean the R-1, R-3, R-5, R-8, R-12 & R-16 Euclidean zoning districts described in §1-19-240 of the Zoning Ordinance; the MH floating

zone district described in §1-19-241 of the Zoning Ordinance; any residential component of PUD or MXD floating zone districts described in §1-19-321 and §1-19-324(D)(1) of the Zoning Ordinance; and any residential component of the VC Euclidean zoning district described in § 1-19-242(B) and § 1-19-313 of the Zoning Ordinance.

"Subdivision Rules & Regulations" shall mean the County's subdivision rules & regulations set forth in Chapter 1-16 of the Code.

"Sketch plat" shall have the meaning set forth in §1-16-3(B) of the Subdivision Rules & Regulations.

"Vested rights" shall have its judicially determined meaning.

"Zoning Ordinance" shall mean the County's zoning ordinance set forth in Chapter 1-19 of the Code.

\* \* \*

**Section 4. *Duration of Moratorium.*** The duration of this Moratorium shall be until the earlier of the following:

1. ~~January 8~~ APRIL 8, 2010 (~~the date 2 years after the effective date of this Ordinance~~); or
2. The adoption of all 3 of the following by the BOCC:
  - a. A Resolution establishing a revised Comprehensive Plan for Frederick County;
  - b. An Ordinance establishing a revised Comprehensive Zoning Map for the unincorporated areas of Frederick County; and
  - c. One or more Ordinances amending the Adequate Public Facilities Ordinance (Code, Chapter 1-20) and addressing each of the following:
    - i. revising road adequacy standards (Code, Sections 1-20-12 and 1-20-31)
    - ii. revising school adequacy standards (Code, Section 1-20-61); and

iii. adopting adequacy standards for fire and ambulance facilities.

\* \* \*

**Section 8. Tolling.**

A. EXCEPT AS PROVIDED IN SUBSECTION B. BELOW, For a property subject to this moratorium, the following time periods under the Frederick County Code shall be tolled for the duration of this moratorium:

1. The time period within which an applicant may take further action after receiving a development permit or approval; and
2. The period of validity of a development permit or approval.

B. IF §11-201 OF THE STATE GOVERNMENT ARTICLE OF THE MARYLAND ANNOTATED CODE OR THE EXTENSION ORDINANCE (NO. 09-23-527) (OR BOTH) COULD APPLY TO EXTEND AN APPROVAL PERIOD OR DEADLINE FOR A PROJECT AFFECTED BY THIS ORDINANCE, THEN ONLY THE LONGER OF ANY EXTENSION PERIOD, WHETHER AUTHORIZED BY §11-201, THE EXTENSION ORDINANCE, OR THIS ORDINANCE, SHALL APPLY. THIS SECTION DOES NOT AUTHORIZE MULTIPLE OR CONSECUTIVE EXTENSION PERIODS TO BE APPLIED TO ANY APPROVAL OR DEADLINE FOR ANY PROJECT AFFECTED BY THIS ORDINANCE.

AND BE IT FURTHER ENACTED AND ORDAINED that, unless specifically amended by this Ordinance, the provisions of Ordinance No. 08-08-484 shall remain in full force and effect,

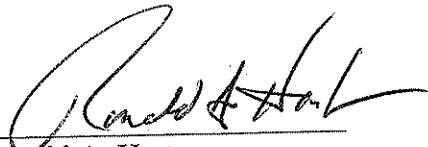
AND BE IT FURTHER ENACTED AND ORDAINED that, the effective date of this ordinance is December 15, 2009.

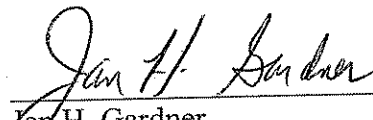


The undersigned hereby certifies that this Ordinance was approved and adopted  
on the 15<sup>th</sup> day of December, 2009.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

  
\_\_\_\_\_  
Ronald A. Hart  
County Manager

  
\_\_\_\_\_  
Jan H. Gardner  
President

KAM  
12/22/09